

ORIGINAL DOCUMENTS

437-68  
24 Feb 86

دیوان داود

Case No. 437

Date of filing: 24 Feb 86

\*\* AWARD - Type of Award \_\_\_\_\_  
- Date of Award \_\_\_\_\_  
\_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

\*\* DECISION - Date of Decision \_\_\_\_\_  
\_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

\*\* CONCURRING OPINION of Mr. Brower  
- Date 24 Feb 86  
2 pages in English \_\_\_\_\_ pages in Farsi

\*\* SEPARATE OPINION of \_\_\_\_\_  
- Date \_\_\_\_\_  
\_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

\*\* DISSENTING OPINION of \_\_\_\_\_  
- Date \_\_\_\_\_  
\_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

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## IRAN-UNITED STATES CLAIMS TRIBUNAL

DUPLICATE  
ORIGINAL

نسخه برابر اصل

دیوان داری دعاوی ایران - ایالات متحدہ

CASE NO. 437

CHAMBER THREE

AWARD NO. 212-437-3

H. A. SPALDING, INC.,

Claimant,

and

MINISTRY OF ROADS AND TRANSPORT OF  
THE ISLAMIC REPUBLIC OF IRAN and  
THE ISLAMIC REPUBLIC OF IRAN,

Respondents.

|                                       |                                           |
|---------------------------------------|-------------------------------------------|
| IRAN UNITED STATES<br>CLAIMS TRIBUNAL | دادگاه داری دعاوی<br>ایران - ایالات متحدہ |
| ثبت شد - FILED                        |                                           |
| Date                                  | 24 FEB 1986 تاریخ                         |
|                                       | ۱۳۶۴ / ۱۲ / ۵                             |
| No.                                   | 437 شماره                                 |

CONCURRING OPINION OF CHARLES N. BROWER

If this Claimant in fact has been "fleeced," I agree that it was not either of the Respondents that did it.

The critical analysis of the evidence contained in the Award becomes even more damning when reviewed against the procedural backdrop of this Case. The Claimant was afforded more than the usual opportunity to present its case. At the conclusion of the Hearing 15 March 1985 it requested and was granted three months, until 14 June 1985, to file "any Post-Hearing Memorial it wishes to rely on." At Claimant's request this date was extended ultimately to 9 September 1985, making a total of nearly six months. After all of that additional time Claimant added only one new exhibit. The Post-Hearing Memorial of Claimant also promised submission of two more affidavits "under separate cover," i.e., an "additional Affidavit" of Mr. Spalding and one of the "bookkeeper for Claimant," but in fact neither was ever submitted.

The Claimant thus has failed to meet even the more sympathetic evidentiary standard appropriate in international arbitral proceedings such as this, where the state of available evidence indeed may be less satisfactory than might be the case in a municipal court proceeding. While Claimant may not have been required to hurdle a high evidentiary threshold, it has failed even to crawl across the lowest.

While Respondents would be entitled under the circumstances to their costs of arbitration under Articles 38 and 40 of the Tribunal Rules, they have not made a claim for such costs with the specificity required. See Sylvania Technical Systems and The Islamic Republic of Iran, Award No. 180-64-1 at 35 (27 June 1985). Therefore no award for costs can be made. Futura Trading Incorporated and Khuzestan Water and Power Authority, Award No. 187-325-3 at 20 (19 Aug. 1985).

Charles N. Brower

Charles N. Brower